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COMMITTEES:
BANKING
LABOR AND HUMAN RESOURCES
AGING

United States Senate

WASHINGTON, DC 20510-3903

December 9, 1997

Ms. Cynthia L. Johnson, Director
Cash Management Policy & Planning Division
Financial Management Service, Room 420
U.S. Department of the Treasury
401 14th Street, S.W.
Washington, D.C. 20227

Dear Director Johnson:

As a member of the Senate Banking Committee, which has jurisdiction over financial services issues, I have been actively involved in the Treasury Department's electronic funds transfer (EFT) initiative known as "EFT-99". In an effort to ensure that EFT-99 significantly expands Federal beneficiaries' access to financial services at a low cost, I respectfully submit the enclosed comments in response to the Treasury's Notice of Proposed Rulemaking (NPRM) on EFT.

I. BACKGROUND SUMMARY

The Debt Collection Improvement Act of 1996 (Pub. L. 104-134) requires that all federal payments, with the exception of tax refunds, be made by EFT as of January 2, 1999. Since passage of the Debt Collection Improvement Act, the Department of the Treasury has undertaken the EFT-99 effort to coordinate implementation of the Act among the Federal agencies. In accordance with this effort, on September 16, the Treasury Department issued a NPRM in which it outlined proposals for implementation of the EFT mandate. Also in the NPRM, Treasury solicited comments on a number of issues related to the establishment of "Electronic Transfer Accounts" (ETAs). I write to provide my comments on the proposed rules and the establishment of ETAs.

II. COMMENTS

A. Objectives of EFT-99

As I indicated in a July 29 letter to Secretary Rubin:

I believe the movement of the Federal government from a "paper-based" benefits payment system to EFT provides a tremendous opportunity for the government to realize cost savings and to reduce fraud in the system of benefit payments. More importantly, I believe the movement to EFT presents an unprecedented opportunity to provide banking services to the estimated 10 million Americans who receive Federal benefits, but do not have bank accounts.¹

¹ Letter of Sen. Jack Reed to U.S. Treasury Secretary Robert Rubin, July 29, 1997.

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B. Definition of "Authorized Payment Agent"

I believe the proposed regulations issued by the Treasury Department take several important steps which achieve the objectives outlined in my letter to Secretary Rubin. For example, the Treasury Department's interpretation of the terms "authorized payment agent" requires that Federal payments be made to members of the Automated Clearing House network, which must be financial institutions. By limiting Federal benefit payments to financial institutions, beneficiaries are covered under Federal consumer protection statutes, which are not applicable to non-financial institutions. The interests of benefit recipients are further protected through this limitation because financial institutions are subject to Federal regulation, whereas most non-financial institutions such as check cashers or money transmitters are not.

I also support Treasury's proposal that the accounts be established in the name of the recipient or his or her authorized payment agent who stands in the shoes of the recipient for purposes of payment. In defining "authorized payment agent", I believe Treasury's deference to the well-established rules on representational relationships is appropriate.

I am, however, concerned that some entities may seek to open accounts at financial institutions on behalf of recipients for a monthly fee. This is contrary to the letter and spirit of existing regulations which contemplates establishment of representational relationships for individuals who are "legally incompetent or mentally incapable of managing benefit payments." To limit such abuses, the Treasury regulations on representational relationships should be narrowly drafted to preserve its applicability to situations contemplated by existing regulations.

C. Voluntary Accounts

The Treasury Department's proposed regulations place minimal restrictions on accounts with financial institutions that are voluntarily established by recipients. To encourage recipients to establish such voluntary accounts, the Treasury Department is engaging in a nationwide education and marketing plan to stress the benefits of EFT. While I support Treasury's efforts to educate consumers and encourage the voluntary establishment of bank accounts, I am concerned that this proposal may have the unintended consequence of punishing those who take the initiative to establish an account.

Specifically, Treasury's education efforts may compel many recipients to establish costly relationships with financial institutions or other financial service providers such as check cashers or money transmitters. Meanwhile, recipients who do not voluntarily establish accounts will be assigned a regulated, low-cost ETA. As a result, there could be a disparity in protections and costs, among those who establish voluntary accounts and those who do not.

This is of particular concern when considering that the unbanked population has lower incomes than Federal benefit recipients with bank accounts. In fact, according to the Treasury Department, the reason that many of the unbanked do not have accounts is because "they do not have sufficient income to be able to afford the cost of standard accounts."²

²Testimony of John D. Hawke, Under Secretary for Domestic Finance, U.S. Treasury Department before the House Committee on Banking and Financial Services, September 25, 1997, Pg. 6.

It, therefore, follows that Treasury should develop a mechanism to enable those establishing voluntary accounts in response to Treasury's national education efforts, to access lower-cost ETAs. At a minimum, Treasury should inform recipients about the future availability of ETAs as a part of its public education campaign.

Failure to address this issue would seriously undermine a guiding principle of EFT-99 which is to ensure the provision of Federal benefits at a reasonable cost. Moreover, a failure to address this issue would impose an even greater financial hardship on much of the unbanked population.

D. Electronic Transfer Accounts

Treasury's proposed regulations establish several basic principles for ETAs. The proposed rule suggests that ETAs be an all-electronic, debit card-based account, held in an account at a federally insured depository, for which recipients will be charged a low, fixed monthly fee.

I support this approach and believe that it will facilitate the movement of millions of the unbanked into the financial mainstream. However, the ultimate success of the ETAs will be largely dependent on Treasury's ability to provide a low-cost account with reasonable means of access.

On the issue of access, the proposed regulations leave open the possibility that financial institutions serving as depositories for Federal benefits could form relationship with non-financial institutions such as check cashers or money transmitters for the disbursement of benefits. If the final regulations permit such relationships to be established, in no event should the Treasury Department permit non-financial institutions to be recipients' sole means of access to their accounts.

Also, if non-financial institutions are allowed to disburse benefits, the Treasury Department should make recipients fully aware of their ability to access their accounts at a financial institution, as well as the cost of not doing so.

Moreover, the Treasury Department must ensure that non-financial institutions provide low-cost services with adequate consumer protections. Treasury should seek to achieve this outcome by giving substantial weight to consumer protections and the costs to recipients, when it evaluates offers to provide ETA services that include partnerships between financial institutions and non-financial institutions.

In the NPRM, Treasury also raised several questions to which I would like to respond:

- Should the account be structured to provide only a basic withdrawal service at the lowest possible cost, with additional service charges for additional features, or should the account offer a range of services at a fixed monthly cost, even if greater than the cost of a basic account?

When considering the fact that the unbanked population has lower incomes than benefit recipients with bank accounts, I believe that cost-minimalization should take precedence in structuring the ETAs. Thus, ETAs should be structured to provide basic withdrawal service at the lowest possible cost. However, recipients should also have the flexibility to choose a higher-cost account with additional features.

- How many withdrawals should be included in the base price of the account? Should the account terms address the charges imposed by automated teller machine owners other than the account provider?

The experience of many states with electronic benefits transfer (EBT) suggests that benefit recipients on average make three to four ATM withdrawals per month. Based on this experience, the terms of ETAs should enable recipients to make four free ATM withdrawals per month. Unless recipients are able to make a reasonable number of free withdrawals per month, they will be compelled to withdraw the entirety of their benefits at one time. This could increase the likelihood that recipients would be victims of crime when withdrawing benefits at ATMs. This concern is particularly great for seniors and the disabled.

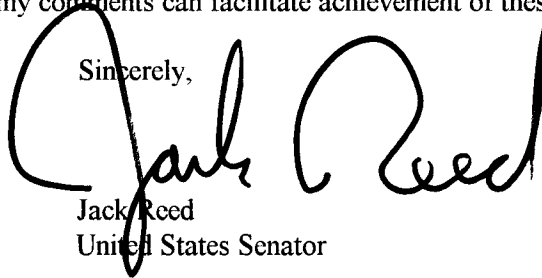
Moreover, by allowing a reasonable number of free withdrawals, the Treasury Department will promote saving among benefit recipients who will be encouraged to leave money in the bank. I believe this is an important first step in bringing the unbanked into the financial mainstream.

With respect to foreign ATM fees, ideally relationships could be formed between ETA providers and the ATM networks that would enable account holders to avoid "foreign" ATMs fees when accessing benefits at an ATM on networks that are parties to the agreement. For example, in the state of Maryland, I understand that contractual relationships were formed between the state and the MOST ATM network which enabled recipients to access EBT accounts without a foreign ATM fee. I believe that Treasury should exercise its authority to facilitate establishment of similar relationships between ETA providers and ATM network operators.

III. CONCLUSION

As I have indicated previously, the EFT mandate provides a tremendous opportunity for the Federal government to reduce costs and fraud associated with the provision of benefits, while simultaneously moving 10 million Americans into the financial mainstream. The success of this effort will ultimately depend on Treasury's ability to promulgate regulations that will provide access to banking services at a reasonable cost. I hope that my comments can facilitate achievement of these goals.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Jack Reed".

Jack Reed
United States Senator